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Stuart Siebert d/b/a Avalanche Location Tenting and Walter Barrera. Case 21–CA–33338 (Formerly Case 31–CA–23866)

February 8, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN
AND BRAME

Upon a charge filed by Walter Barrera on April 27, 1999, the General Counsel of the National Labor Relations Board issued a complaint on October 21, 1999, against Stuart Siebert d/b/a Avalanche Location Tenting, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.¹

On December 23, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On December 30, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 2, 1999, notified the Respondent that unless an answer were received by December 9, 1999, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ The complaint was served on the Respondent by certified mail. The Post Office returned the complaint to the Region as "unclaimed." The Respondent's failure or refusal to accept certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been owned by Stuart Siebert, a sole proprietorship, doing business as Avalanche Location Tenting, with a main office located at 5550 Tuxedo Terrace, Los Angeles, California, and has been engaged in the business of setting up tents for motion picture companies and performed services for Universal Studios at a Cal State Fullerton location in Fullerton, California (Fullerton jobsite). During the 12-month period ending April 30, 1999, a representative period, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for Universal Studios, Paramount Pictures, and other enterprises within the State of California, each of which other enterprises, during the same period of time, purchased and received at its California facilities goods valued in excess of \$50,000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Stuart Siebert held the position of president and Wilfredo Valenzuela held the position of dispatcher, and both have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

On about April 26, 1999, at the Fullerton jobsite, Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by complaining about not having been paid for services performed.

On about April 26, 1999, the Respondent, by Stuart Siebert, at the Fullerton jobsite, threatened to discharge employees because they had concertedly complained about not having been paid for services performed.

On about April 26, 1999, the Respondent discharged its employees Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto.

The Respondent threatened to discharge employees and discharged the above-named employees because they concertedly complained to the Respondent about not having been paid for services performed, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employ-

ees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging employees Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharges, and to notify the 10 employees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Stuart Siebert d/b/a Avalanche Location Tenting, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they concertedly complain to the Respondent about the wages, hours, and working conditions of the Respondent's employees by complaining about not having been paid for services performed or because they otherwise engage in protected concerted activities.

(b) Threatening to discharge employees if they engage in protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto full reinstatement to their former jobs or, if those jobs no longer exist, to substantially

equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto, and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 26, 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

² If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. February 8, 2000

John C. Truesdale, Chairman

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against employees because they concerted complain to us about the wages, hours, and working conditions of our employees by complaining about not having been paid for services performed or because they otherwise engage in protected concerted activities.

WE WILL NOT threaten to discharge employees if they engage in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful discharges of Amilcar Barrera, Walter Barrera, Walter Estrada, Julio Flores, Marlon Giron, Pedro Garcia Hernandez, Jorge Hernandez Laureano, Miguel A. Melgar, Hugo Rene Santos, and Antonio Soto, and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

STUART SIEBERT d/b/a AVALANCHE LOCATION TENTING